

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

14-CR-4067 JAP

SAMUEL SILVA,

Defendant.

MEMORANDUM OPINION AND ORDER

On July 4, 2016, after the deadline for filing motions in limine had passed, Defendant Samuel Silva filed his MOTION IN LIMINE NO. 2 TO EXCLUDE TESTIMONY PURSUANT TO FEDERAL RULE OF EVIDENCE 403 (Doc. No. 135) asking the Court to exclude from trial evidence that Defendant is a known member of a street or prison gang. Defendant requests that the Court excuse his untimely filing of the motion because defense counsel is still in the process of reviewing evidence in preparation for trial. *See* MOTION FOR LEAVE TO FILE OUT-OF-TIME (Doc. No. 136). In its response, the United States indicates that it does not oppose either motion and would like the Court to enter an order granting the motions. *See* UNITED STATES' RESPONSE TO DEFENDANT'S SECOND MOTION IN LIMINE TO EXCLUDE PROPOSED TESTIMONY PURSUANT TO FEDERAL RULE OF EVIDENCE 403 (Doc. No. 138).

IT IS THEREFORE ORDERED THAT:

1. Defendant's MOTION FOR LEAVE TO FILE OUT-OF-TIME (Doc. No. 136) is GRANTED.

2. Defendant's MOTION IN LIMINE NO. 2 TO EXCLUDE TESTIMONY
PURSUANT TO FEDERAL RULE OF EVIDENCE 403 (Doc. No. 135) is
GRANTED.
3. The United States may not introduce evidence at trial regarding Defendant's alleged
gang affiliation without first securing a court ruling, outside the presence of the jury,
that Defendant has opened the door to the admission of such testimony.



SENIOR UNITED STATES DISTRICT JUDGE